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Notification of the Securities and Exchange Commission

No. KorDor. 30/2540

Re: Sale of Securities by a Securities Company Which Does Not Have Possession of the Securities

By virtue of Section 14 and Section 98(5) of the Securities and Exchange Act B.E. 2535 (1992), the Securities and Exchange Commission hereby prescribes the following rules:

Clause 1. In this notification:

“short sale” means a sale of securities that must be borrowed in order to complete delivery;

“customer” means a person who entrusts a securities company to undertake the purchase and sales of securities on his/her behalf;

“institutional customer” means a commercial bank or finance company or securities company which undertakes short sales for itself, a foreign financial institution which undertakes short sales for itself or for customers domiciled in a foreign country and other persons prescribed by the Office;

“margin account” means an account which keep records of loans to customers for the purpose of purchasing securities or the loan of securities to customers in order to complete sales;

“Stock Exchange” means the Stock Exchange of Thailand;

“securities trading center” means the securities trading center under the law on securities and exchange;

“Office” means the Office of the Securities and Exchange Commission.

Clause 2. A securities company may sell securities that are not in its possession only in the following cases:

(1) short sale for the securities company itself or pursuant to the customer’s order according to rules prescribed in this Notification; or

(2) sale of securities pursuant to the customer’s order where the customer has not yet delivered possession of such securities to the securities company at the time of selling order but the securities company is confident that the customer owns such securities, regardless of whether the securities are in the customer’s possession or deposited with other securities companies or deposited with the securities depository.

Clause 3. A securities company may undertake short sales for itself or for a customer only in the following cases:

(1) short sale of securities which are equity instruments listed on the Stock Exchange or registered with at the securities trading center in compliance with the rules prescribed by Notification of the Stock Exchange or the securities trading center with the approval of the Office, as the case may be;

(2) short sale of securities which are debt instruments, whereby the Office also has the power to issue Notifications prescribing addition rules on such matter for the securities companies; or

(3) short sale as a consequence of duties arising from obligations under categories or characteristics prescribed by Notification of the Office.

Clause 4. In a short sale of securities pursuant to the customer's order which is not an institutional customer, the securities company shall proceed as follows:

(1) inform the customer and obtain the customer's signature of acknowledgment of the risks which may arise from a short sale;

(2) arrange for the customer to short sell through a margin account and call for collateral, including undertake the securities lending for completion of securities sales under the rules prescribed by Notification of the Office.

Clause 5. Prior to undertaking a short sale of securities for itself, a securities company shall procure a source for borrowing securities in order to enable delivery of securities in the short sale items within the time period prescribed by the clearing house under the law on securities and exchange or within a time period agreed upon by the parties to the trading of securities, as the case may be.

In the case of a short sale pursuant to the customer's order, the securities company must procure securities in order to enable a loan to be made to such customer or procure a source for borrowing securities for such customer, except where the customer is an institution customer which has shown that it has already borrowed securities and the customer is able to deliver securities pursuant to the short sale items within the time period prescribed by the clearing house under the law on securities and exchange or within the time period agreed upon by the parties to the trading of securities, as the case may be.

In any sale of securities not designated as a short sale, but there is a necessity to borrow securities in order to complete delivery within the time period prescribed by the clearing house under the law on securities and exchange, the securities company shall borrow securities or arrange for the customer to borrow securities only from or through the central securities depository, provided that the reasons of necessity prescribed by a Notification of the Office has been given.

(Translation)

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Clause 6. A securities company shall keep records and prepare reports on short sale in accordance with rules prescribed by a Notification of the Office.

Clause 7. This Notification shall come into force as from the day following the date of its publication in the Government Gazette.

Notified this 31st day of July 1997.

(Dr.Thanong Bidaya)
Minister of Finance
Chairman of the Securities and Exchange Commission